



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

PIKE CREEK RECREATIONAL  
SERVICES, LLC, a Delaware limited  
liability company,

Plaintiff,

v.

NEW CASTLE COUNTY, a political  
subdivision of the State of Delaware,

Defendant.

C.A. No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Pike Creek Recreational Services, LLC (“PCRS”) files and asserts its Complaint against Defendant New Castle County (the “County”), and, in support thereof, alleges as follows:

**PARTIES**

1. PCRS is a limited liability company organized and existing under the laws of the State of Delaware.

2. PCRS is the exclusive holder of all rights, title and interest in those certain 179.28 acres of real estate situate in Mill Creek Hundred, New Castle County, State of Delaware, being New Castle County Tax Parcel Nos. 08-036.40-058, 08-036.10-109, and 08-042.40-134 (together, the “Property”).

3. Defendant New Castle County is a political subdivision of the State of Delaware established under 9 DEL. C. § 101 *et. seq.*

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this dispute pursuant to 10 DEL. C. § 6501, because PCRS seeks a declaratory judgment and there is an actual and justiciable controversy between the parties.

### **FACTS**

5. The Property is subject to an agreement by the developers of Pike Creek dated September 10, 1964, as amended on December 22, 1969 (together, the “Covenant”) naming the County as a third party beneficiary.<sup>1</sup>

6. PCRS submitted engineering plans to the County in 2010 proposing the construction of residential and commercial development upon the Property (the “Original Plan”).

7. Shortly after receiving the Original Plan, the County filed suit against PCRS in this Court on November 9, 2010, Civil Action No. 5969-JW (consolidated with C.A. N10M-12-005 PRW) (the “Initial Action”). The County filed the operative Verified Second Amended Complaint (the “Complaint”) on December 20, 2010.

---

<sup>1</sup> A true and correct copy of the 1964 Agreement and 1969 Amendment are attached hereto as **Exhibits A and B**, respectively, and incorporated herein by reference.

8. PCRS filed its Second Amended Answer and Counterclaims to the Initial Action on March 30, 2015.

9. On September 6, 2013, and as amended December 30, 2013, the Court issued an opinion holding, *inter alia*, that the Covenant requires PCRS to set aside a minimum of 130 acres of the Property for the development of an 18-hole golf course, but does not require PCRS to operate a golf course on the set-aside land (the “Opinion”). A true and correct copy of the Opinion is attached hereto as **Exhibit C** and incorporated herein by reference

10. The Initial Action has been stayed by order of the Court, pursuant to the mutual agreement of the parties, since December 9, 2016, while PCRS pursued a deed restriction amendment application, as required by the Court’s decision in the Initial Action, with the hope of reaching a resolution of all pending actions with the County through a new development plan (the “Compromise Plan”).

11. After approximately two (2) years, and after working with a group of residents living near the Property, on December 4, 2018, PCRS presented the Compromise Plan to the New Castle County Department of Land Use and Planning Board with its application for a deed restriction change.

12. The Department of Land Use and Planning Board issued their joint Recommendation on PCRS’s application for a deed restriction change on February 19, 2019, recommending that the New Castle County Council deny PCRS’s

application, and therefore the Compromise Plan (the “Recommendation”). A true and correct copy of the Recommendation is attached hereto as **Exhibit D** and incorporated herein by reference.

13. The Recommendation, for example, states:

Table 40.05.420 of the UDC requires that “land previously dedicated as open space” must be subtracted from the gross site area to determine the base site area. Thus, for PCRS to use the land set aside for the development of an 18-hole golf course as a component of its base site area, a deed restriction change is required to be granted by County Council pursuant to UDC § 40.31.130. Absent a deed restriction change being granted, the Suburban zoned property available for development would total approximately 47 developable acres, upon which approximately sixty (60) housing units could be built.<sup>2</sup>

14. The Recommendation, in terms of its legal assumptions and conclusions, does not comport with the terms of the Covenant.

15. PCRS now seeks a declaratory judgment concerning the enforceability of the Covenant’s provisions regarding development density and applicable County law.

---

<sup>2</sup> Ex. D at 5.

**FIRST CAUSE OF ACTION**  
**DECLARATORY JUDGMENT**

16. PCRS re-alleges the allegations in paragraphs 1-15 herein.

17. An actual and justiciable controversy exists between PCRS and the County as to whether the Covenant prevails over provisions of the County's code.

18. The controversy involves the rights of PCRS over its property and this action is brought against an entity who has an interest in contesting the claim.

19. The controversy is between parties whose interests are real and adverse, and the issues involved are ripe for judicial determination. PCRS seeks a declaration that changes to County law adopted *after* the effective date of the Covenant cannot unilaterally amend the Covenant's provisions, as last amended in 1969—in particular, Paragraph 9 of the Covenant related to development density and Paragraph 16 of the Covenant related to anti-retroactivity.

20. Paragraph 9 of the Covenant states, in relevant part:

The DEVELOPER, on its own behalf and of its successors and assigns, covenants and agrees that not more than 5,454 family dwelling units will be constructed or erected on the SUBJECT ACREAGE known as Pike Creek Valley, subject only to the qualification that the number of family units may be increased in accordance with the provisions of Article 8, if land set aside for school and church purposes is unclaimed and unused.<sup>3</sup>

21. Paragraph 16 of the Covenant states, in relevant part:

---

<sup>3</sup> Ex. A ¶ 9 (as amended by Ex. B ¶ 6).

DEVELOPER covenants and agrees that in the event that provision shall be made in the applicable zoning law for planned unit development districts or similar types of zoning the SUBJECT ACREAGE may be appropriately zoned thereunder, provided that such rezoning would permit DEVELOPERS to accomplish all of the aspects of the preliminary, tentative comprehensive plan and of the updated master plan and would not be more restrictive than the limitations imposed upon DEVELOPER by the terms of this agreement.<sup>4</sup>

22. A declaratory judgment is necessary and proper in order to determine PCRS's rights under the Covenant before New Castle County Council proceeds to a vote on the Compromise Plan.

### **PRAYER FOR RELIEF**

Wherefore, PCRS, the Plaintiff, prays as follows:

1. That an Order issue declaring that:
  - a. Paragraph 9 of the Covenant is legally binding upon the County and PCRS notwithstanding any provision of County law to the contrary;
  - b. Paragraph 16 of the Covenant is legally binding upon the County and PCRS notwithstanding any provision of County law to the contrary;
  - c. Such further relief as may be just and equitable.

---

<sup>4</sup> Ex. A ¶ 16.

**McCARTER & ENGLISH, LLP**

/s/ David A. White

David A. White (DE ID #2644)

Matthew J. Rifino (DE ID #4749)

405 N. King Street, 8<sup>th</sup> Floor

Wilmington, Delaware 19801

Telephone: (302) 984-6300

Facsimile: (302) 984-6399

*Attorneys for Plaintiff*

Dated: May 23, 2019